

LBNL – PROCUREMENT STANDARD PRACTICES

Section: 52 Solicitation and Subcontract Clauses

Subject: 52.1 Exceptions to Terms and Conditions

PURPOSE: This standard practice (SP) defines the reviews and approvals necessary for deviations or exceptions to subcontract terms and conditions.

POLICY: The Laboratory's standard terms and conditions (hereafter referred to as standard clauses) for subcontracts are subject to DOE approval. Any deviations from previously approved language in standard clauses will be coordinated with Laboratory Counsel and approved by DOE.

SCOPE: This SP applies to subcontracts involving deviations or exceptions to standard clauses.

DEFINITIONS:

Standard Clauses

Standard clauses are those terms and conditions for use in broad subcontract types which are established by the Laboratory to satisfy Prime Contract requirements and represent good business practices.

PROCEDURES:

Exceptions to Standard Clauses

When an offeror or subcontractor takes exception to standard clauses:

- Determine the offeror's or subcontractor's specific objection(s) to the standard clauses;
- Attempt to negotiate the subcontractor's unqualified acceptance of the standard clauses;
- Determine whether the nature of the exception involves a deviation from the standard clauses that necessitates Laboratory Counsel review (such as in the case of the *Buy American Act* provision being included in a subcontract to a foreign firm);
- Process requests for DOE approval to modify the standard clauses through Laboratory Counsel; and
- Negotiate changes, as approved, with the subcontractor.

Processing Requests for Laboratory Counsel Review

Requests for Laboratory Counsel review must be processed through the procurement supervisor. Requests should be made in writing and should typically include the following information when it is appropriate and available:

- Value and acquisition method (single source or competition) of the subcontract;

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- Whether the subcontract is written for off-the-shelf, commercially available items;
- Whether this type of issue has been handled previously and whether any exceptions were approved (include a copy of the approved, revised standard clause);
- A copy of the standard clauses (current and proposed language) that need to be reviewed;
- A statement of the specific problems to be resolved, a description of the intended effect of the modification, and the procurement specialist's recommendation (a general request for "comment and review" is not acceptable);
- A reasonable deadline for completion of the review, including adequate time for delivery of the response through interoffice mail; and
- Other pertinent information that may be of assistance to or required by Laboratory Counsel, such as a copy of the subcontract, a summary of negotiations, and any prior legal research on the same subject.

REVIEWS/APPROVALS:

**Procurement
Supervisor**

Requests for Laboratory Counsel review must be reviewed by the procurement supervisor. (See SP 1.2, *Delegation of Procurement Authority*.)

**Laboratory Counsel
and DOE**

Laboratory Counsel and DOE must review all exceptions and deviations to standard clauses. Laboratory Counsel will determine the method by which the Laboratory will seek DOE approval.

RESPONSIBILITIES:

**Procurement
Specialist**

The procurement specialist must:

- Process requests for exceptions or deviations to standard clauses through Laboratory Counsel;
- Attempt to negotiate unqualified acceptance by the subcontractor of the Laboratory's standard clauses; and
- Provide all appropriate information pertaining to requested exceptions or deviations to Laboratory Counsel.

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REFERENCES: Prime Contract Clause I.114 – Contractor Purchasing System